



Memorandum

TO: HONORABLE MAYOR &
CITY COUNCIL

FROM: Mayor Chuck Reed
Councilmembers
Sam Liccardo,
Forrest Williams, &
Pierluigi Oliverio

SUBJECT: ACCEPTANCE OF ACTIONS
RELATED TO DOWNTOWN
ISSUES

DATE: April 24, 2008

APPROVED:

Chuck Reed

Sam Liccardo

Forrest Williams
4-24-08

RECOMMENDATION

Accept each of the Staff Recommendations as to Downtown Issues, with the following exceptions:

1. Direct the City Manager to bring to Council a proposal to re-implement a "soft closing" program—with whatever geographical or temporal limitations that the City Manager may recommend—on a permanent basis. The proposal should come to Council contemporaneous with Council's consideration of a cost-sharing plan (per the Council's June 2007 direction).
2. Direct the City Manager that with whatever plan for cost-sharing is formulated in the coming weeks, a substantial portion of the fee revenues will be used to support the "downtown liaison" position within the City Manager's office, as well as funding other collaborative efforts to improve the downtown safety and environment, such as training for club security, soft closings, and security-enhancing technology.
3. Accept the staff recommendations related to Sidewalk Dining—requiring that sidewalk cafes close at midnight, that food service be made available, and occupancy be limited to the number of persons that can be seated at the tables—but with the following modifications:

- a. These conditions and the permit will expire after a period of eighteen (18) months after the date of the enactment of this ordinance;
- b. Approximately twelve (12) months after the enactment of this ordinance, staff will return to Council with an evaluation of the effectiveness of the conditions, and with specific recommendations for Council action to continue the program under the currently proposed conditions or some modification thereof;
- c. In light of the substantial cost and inconvenience associated with applying for such permits, the City Manager shall that permit holders receive a fee rebate in the event that Council terminates the sidewalk café program for any reason;
- d. The occupancy of the sidewalk café will be limited to the number of persons that can be reasonably accommodated at the sidewalk café tables, regardless of whether the tables are for sitting or standing (that number may be fixed in advance after consultation with the applicant, as the City Manager deems appropriate);
- e. Those holders of conditional use permits that (a) were issued prior to October 31, 2006, and (b) authorized sidewalk café uses until the closing time of the establishment, may continue their outdoor uses until the closing time of the establishment (currently 2 a.m.).

ANALYSIS

In supporting the recommendations of City Manager and Redevelopment Agency, we are mindful of the extraordinary effort and time expended by officials with the Police Department, the Redevelopment Agency, the City Manager's office, and many other individual departments. In particular, we appreciate the outreach that staff has repeatedly conducted with various stakeholders in the formulation of each of these policies--especially the promoter's ordinance, which Council will consider within weeks—and we appreciate the flexibility to the “give-and-take” that necessarily accompanies the formulation of policies that impact many stakeholders. We look forward to taking additional action in coming weeks on a promoter's ordinance, a downtown planning effort, and changes in permit fees.

Nonetheless, minor tinkering with the staff recommendations appears appropriate on the following fronts:

1. Soft Closing Pilot Project

In proposing the “soft closing” pilot program last spring, we sought to overcome the patently problematic dynamic that repeats itself every weekend evening at 2 am: thousands of patrons, many of whom have consumed significant quantities of alcohol,

pour out of clubs and into the streets nearly simultaneously. They encounter dozens of uniformed officers, who direct them to leave the city's core immediately. Regardless of how well-trained and professionally disciplined our officers may be, the dynamic is inherently confrontational, and it lends itself to conflict. With this pilot project, we sought to diffuse that tension by allowing individuals to leave at a more leisurely pace. We did not do so blindly; other cities have implemented a similar approach, with considerable success.

Reducing Tensions

By all measures, the pilot project succeeded in reducing the conflicts at closing time between club patrons, club security personnel, and the police. In a public meeting held with club owners in January, the owners lauded the "soft closing" approach *even though they uniformly reported losing money* (because they paid for staff to remain beyond the 1:30 a.m. cutoff for sales of alcoholic beverages). They did so, quite simply, because they viewed the short-term financial losses as a down payment on a long-term vision of creating a downtown viewed by their customers to be safer and friendlier. They noted that their own security personnel reported substantially fewer physical confrontations with patrons because they did not bear the burden of pushing them out the door at 1:45 a.m. In short, they observed a better customer experience.

The staff's report that only a few clubs "participated" in the program overlooks a larger point made clearly by the club owners at that January meeting: whether clubs stayed open a few minutes or a full hour beyond 2 a.m., the "soft closing" dramatically improved the dynamic at closing time. That is, in either case, club owners didn't feel the need to hastily shove away the same customers who they wooed only hours before. As one owner noted at that meeting, "once you push a customer out on to the sidewalk and make him irritated, everything that happens after that is bad—for the bouncers, for the police, and for the city." Obviously, avoiding the "push" could relieve the likelihood of conflict.

Crime and "Police Events"

The statistics bear out this fact. Relying upon the data compiled by San Jose Police Department, the number of total "police events" in the entire Entertainment Zone dropped by 18% (from 2,719 to 2,232) during the 180-day pilot period compared to the same period the prior year (see Attachment A, comparing Time Periods Two and Four). Within the two police beats (E2 and E3) immediately surrounding the pilot study area in the Historic District, the drop appears similarly significant: from 1,952 to 1,650. Among specific types of calls, the largest drops occurred in the categories of "disturbances" and "assault events," a phenomenon that proponents of "soft closing" would predict.

To be sure, safety in the downtown has improved irrespective of this pilot project, and credit for this improvement seems readily attributable to the hard work of Sgt. Brian Kneis and his team in the Entertainment Zone. The Police Department's success in reducing the "cruising" and juvenile loitering appears well-documented and should be appropriately recognized.

Yet city officials have also observed a more collaborative response from several club owners and their security personnel, which has also improved the environment. On that score, one should not overlook the influence of this pilot project in providing a "carrot" for concerted collaboration among several club owners to "police themselves" to ensure the pilot's success.

The staff memorandum (at page 3) attributes the decline in reported "police events" to a host of reasons unrelated to the pilot project, but those explanations are not supported by the evidence. For instance, the memorandum attributes the decrease in police events from 2006 to 2007 to the "active enforcement of the curfew ordinance" and "diversion of the traffic to address the Downtown vehicle cruise," yet Sgt. Kneis began implementing those tactics in the summer of 2006, not in the summer of 2007. (See February 27, 2007 Report of the Downtown Working Group from Councilmember Williams and Chief Davis, page 3; see also June 16, 2006 Mayor's June Budget Message from Mayor Ron Gonzales, page 11).

The staff memorandum also attributes the decline of police events in the EZ to "police patrols in the garages [and] increased parking fees in certain garages," yet the DOT and SJPD reported to Council several months ago that the new parking security and fee policies have *drastically increased* police events in the parking garages during this time. At the January 8, 2008 Council meeting, staff's report ("Final Report on Parking Security, Cleaning and \$5 Pilot Parking Rate in Garages," page 5), compared the six-month period from July to December, 2006 with a *five-month* period from July to November, 2007, and found a drastic increase in the aggregate number of police events. The report showed a near tripling of police calls for service at the two key public garages, and an even more dramatic increase in self-initiated enforcement actions (from 219 to 1109). The "soft closing" pilot period (July 27, 2007-January 23, 2008) almost completely overlapped the duration of the parking fee pilot, so one should expect those parking policies to drive a huge surge in police events during the "soft closing" pilot study period. In fact, the opposite has occurred.

Despite all of this statistical evidence, one might still reasonably dispute whether the "soft closing" pilot actually had the beneficial effect in reducing police calls for service. One cannot, however, cling to the opposite conclusion. That is, there is no evidence that a "soft closing" did what its detractors claimed it would do: push crime later into the evening, or make us less safe. If anything, based on the data, this program likely makes us safer, and it has done so during a period when the rest of the city has faced progressively higher rates of crime.

As with the "police events" data, assessing the cost of the overtime consumed by the Police Department requires context and perspective. First, the number of police overtime hours *dropped* between the comparable 180-day period in 2006 and the study period (see Attachment A, comparing Time Periods Two and Four), from 8,868 to 8,664 hours. In that context, assessing the cost of "additional" overtime seems problematic. Second, in the June 2007 budget process, the Council approved an allocation of \$150,000 for overtime that the Police Department requested for a 90-day "soft closing" pilot project.

In fact, at the 90-day mark, the project used little more than \$20,000 according to the Department's report (and \$43,000 over twice that duration), a small fraction of the anticipated cost. In this context, the costs of the program do not seem overly burdensome. If anything—particularly in light of its benefits—the program comes at a bargain.

Although these two performance measures—calls for service and police overtime costs—adequately demonstrate program's effectiveness, those measures don't tally for larger benefits of the program. The Hospitality Zone Assessment (page 9) identified such goals as "better customer satisfaction," "increased autonomy and self-regulation of business operators," and "development of a closer working relationship with the police officers assigned to the Entertainment Zone." Indeed, for the first time in the memory of many, this program actually spurred club owners and the police department to work cooperatively, because club owners had a strong incentive to show that they could make the program "work" for everyone involved.

Implementing the program on a permanent basis may cost money—though undoubtedly less than some believed. Moving forward, the City Manager might mitigate the cost of the program by taking small steps, and moving incrementally. For instance, staff might propose a 2:30 a.m. closing time (rather than 3 a.m.), or staff might propose to begin in a similarly confined geographic area, before deciding whether and how to expand it. These "baby steps" can mitigate costs while we learn more about implementation, but they confer the simple benefit of enabling patrons to leave without being pushed.

2. Funding the Position in the City Manager's Office for Downtown Issues, and Cost Sharing with the Entertainment Industry

The Staff's April 15, 2008 memorandum explicitly invites "council policy guidance" as to the funding of a downtown liaison position in the City Manager's office, and staff also seeks feedback on "the concept of seeking funding for a portion of this position by the entertainment industry."

Staff has discussed the concept of splitting the cost of the position between the General Fund and the Redevelopment Agency, and we support such an allocation.

As for that portion emanating from the General Fund, this council approved the implementation of a cost-sharing scheme with the clubs last year. (See March 27, 2007 Council hearing, approving February 28, 2007 Downtown Working Group report, page 2). Some of the revenues generated from any fees on clubs could help to fund this "downtown liaison" position.

In today's budget-strapped environment, it is appropriate that Council is considering a fee that clubs would pay some "fair share" to support the costs of city services like policing and code enforcement. The cost of policing the Entertainment Zone exceeds the roughly \$400,000 in tax revenue generated by downtown clubs by a factor of three or

five, depending how those costs are calculated. However, due consideration also should be given to the additional policing costs incurred from activity at clubs or bars throughout the rest of the city, to ensure that fees are applied in an evenhanded manner.

As we move into an inevitably controversial phase of discussing the implementation of a "nightclub fee," it remains critical that we not lose sight of the common vision, upon which we all agree: a vibrant, safe, and friendly nightlife in the downtown. This vision, of course, involves a diminished presence of police at closing time. From the perspective of a police chief, councilmember, club patron, tourist, or club owner, we all agree that we'd like to be spending fewer public resources on downtown policing.

To reach this goal requires "bringing along" the club owners to police themselves and to work collaboratively with the Police and the City. Nothing will undermine this spirit of collaboration more than imposing a fee in a manner in which it is viewed as merely punitive. Although much or even a majority of the fees should support policing, the fee revenue should also support a collaborative approach to improving safety and compliance with the law. We know that measures taken in the recent past have helped, such as funding training for club security personnel, and by improving communication with city staff. These efforts require money, of course; so will other measures, such as ensuring that club security staffs have obtained state-mandated accreditation and background checks, or installing information-sharing technology--such as video cameras and card readers--that enables clubs to exclude patrons who have caused problems in other clubs. Of course, paying for some portion of the salary of the City Manager's "downtown liaison" will help to ensure full compliance by the clubs with their permits and safety-related obligations in a collaborative way.

A short-sighted approach would have us use all of the revenue generated from the fees for policing, and will perpetuate the current approach of filling the core with over 50 officers every Saturday night at taxpayers'—and fee-payers'—expense. The long view will lead us to a more collaborative approach that will ultimately reduce demands for city services. We urge the latter.

3. Sidewalk Café Permits

In June of 2005, Council sought to expand the opportunities for dining and entertainment and to take advantage of San Jose's superior weather by granting downtown businesses the ability to obtain a Sidewalk Café Permit to operate the café during business hours.

Several business owners took advantage of that opportunity, but also took the risk of investing tens of thousands of dollars in exterior improvements to allow for outdoor dining and socializing. Those business owners have operated their sidewalk cafés until 2 a.m. with few or no problems, as reflected in Commissioner Platten's findings in the minutes of the Planning Commission.

We hesitate to join the Planning Commission's recommendation to allow sidewalk cafés until 2 a.m., in deference to the Police Department's reasonable concerns about noise and whatever safety implications may accompany "bringing the bar out into the street" until that hour. For that reason, we support the staff recommendation to close the sidewalk café's at midnight.

At the same time, many of Police Department's concerns relating to noise and conduct appear adequately addressed by the proposed condition that dramatically reduces the occupancy of sidewalk cafés (by requiring that patrons not exceed the number of chairs around the tables outside). Further, outdoor cafes provide the safety benefits that arise from "natural surveillance;" pedestrians and others outside feel (and are) safer where we have more "eyes on the street."

As the nighttime environment changes downtown, we'll likely seek to reconsider these restrictions, to allow for more liberal use for outdoor restaurants, cafes, and bars catering to patrons leaving the theaters, arts venues, and clubs in the late hours. Nonetheless, we need to walk before we can run, so the midnight closing time for the cafes strikes us as a reasonable compromise.

Business Owners Relying on Prior CUP's

We have concerns, moreover, about a small handful of business owners who detrimentally relied on the City's and RDA's encouragement to invest large sums to install such sidewalk cafés in recent years, only to have the rules changed *ex post*.

For example, the owners of *Tres Gringos* and *San Jose Bar and Grill* estimate that they spent over \$100,000 out of their own pockets (not counting RDA's substantial contribution) to retrofit the aging building housing *Tres Gringos* and *San Jose Bar and Grill* for outdoor café use. They invested this sum in reasonable reliance upon the notion that if they complied with their March 26, 2003 Conditional Use Permit—which provided that "the hours of operation for a sidewalk café shall be 9 am to 2 am"—they would continue to be able to operate outdoors under those terms. Similarly, owners of *Britania Arms* invested over \$100,000 into their retrofit (also not counting RDA's contribution) as part of a program that the RDA promoted to induce investment in sidewalk cafes in the ramp-up for the San Jose Grand Prix. Without their knowledge, that pilot program expired on October 31, 2006, and nothing was brought to Council to either extend or terminate the program.

Disrupting the reasonable investment expectations of the owners of these establishments seems unfair. Accordingly, the conditions of the permits of those business owners who have incurred this considerable expense should be "grandfathered" according to the permits that they paid for prior to the expiration of the pilot program, to allow them to keep them open until their closing time.

